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W. Scarlett

REPORT

OF

The Trial of an Action

BROUGHT BY

Mrs. SARAH BINGHAM

AGAINST

The Rev. JOHN GARDINER, D.D.



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IMPUTATION OF THEFT.

R E P O R T

OF

The Trial of an Action

BROUGHT BY

MRS. SARAH BINGHAM

AGAINST

The Rev. JOHN GARDINER, D.D.

FOR A MALICIOUS LIBEL, IMPUTING TO HER THAT
SHE HAD STOLEN A ONE POUND NOTE :

WHICH TOOK PLACE

AT WELLS,

On Thursday the 17th Aug. 1820,

Before the Honourable Mr. Justice BURROUGH and a Special Jury.

WITH A PREFACE.

LONDON:

PRINTED BY RICHARD AND ARTHUR TAYLOR ;

AND TO BE HAD OF THE PRINCIPAL BOOKSELLERS AT BATH, SALIS-
BURY, BLANDFORD, DORCHESTER, AND SHERBORNE.

1820.



P R E F A C E.

THE interest excited by the Trial reported in the following pages makes it unnecessary to offer any apology for laying the report before the Public. In prefixing a few observations to it, the Editor is anxious to disclaim any purpose of questioning the impartiality of the Judge or the Jury, whose decision has so fatally disappointed the hopes of the complaining party. The estimation in which they are, and, he sincerely trusts, will continue to be universally held, would even deter him from any attempt to show that their decision may possibly be erroneous, if such an attempt implied a supposition that they had acted under an improper bias. He hopes, however, that it is consistent with the most perfect respect for them to suggest that they may have erred in their reasoning, or that some material views of the case may have escaped them, a misfortune which it may be said to have been less their duty than that of others to provide against.

The case, admitting all that is sworn against the lady by witnesses not cross-examined, is briefly this. At the age of seventy years, after a life of distinguished probity and piety, she hears a charity sermon in

the chapel in which she has for years been a punctual and devout attendant. In one of the boxes held at the door to receive donations, there is lying, at the moment she reaches it, in her way out of the chapel, a one-pound note, and only one, folded up. Having put her donation into the box on coming up, she afterwards makes a pause or a turn, puts in her hand a second time, and at noon day, with a large proportion of the congregation surrounding her, takes out the note, saying "Oh, this is my note." A servant who hears this answers "No, it is not yours, you took it out of the box;" of this she takes no notice, but goes forward with the note in her hand, and on reaching the end of the chapel passage in Milsom Street, though her residence is at the top of Gay Street, makes her way to Quiet Street, and this, not by crossing Milsom Street, but by a path nearer the walls of the houses, behind some chairs and chairmen. The servant heads her, by directly crossing Milsom Street, as she reaches Quiet Street, and obtains a view of her face; and she, after proceeding four or five paces down Quiet Street, at a distance of barely fifty yards from the spot at which the box was held, suddenly raises her hand, turns towards the middle of the street, opens out the note, which the servant then for the first time distinctly sees, in the presence of all the persons passing the end of the street, goes back towards the chapel, and, as soon as the way to the Vestry is clear, delivers the note to the managers of the collection there, stating that she supposed she must accidentally have taken it out of the box in her sleeve.

The taking of the note is undisputed, and the only

question is, whether it was taken with an intention to steal, or from mistake, or absence of mind.

Demonstration is impossible upon such a question, from the nature of it. It must be decided, as far as it admits of a decision at all, by a calculation of probabilities; and in estimating the probability of the note's having been taken with an intention to steal, the material considerations would seem to be the following.

1. Whether there was a motive to steal :
2. Whether it is consistent with any experience that a theft should be committed at the time and place and in the manner alleged :
3. Whether the conduct of the party accused betrayed consciousness of guilt, or was consistent with the feelings and objects of a person committing a theft :

1. Respecting motive, the most prevailing motive to theft, want, is disproved by the evidence that the lady in question is in affluent circumstances, living at ease and in credit, on her own fortune. Another common motive, avarice, is excluded by the perfection of moral and religious character ascribed to her by every person acquainted with her; and her accuser's Counsel, far from cross-examining these witnesses to ascertain whether their praises admitted of no exception, confessed that her character was most exalted, and that she was fully entitled to all the encomiums bestowed on her. There have been rare instances of theft committed for the pleasure derived from the skill and address necessary to their accomplishment. But this temptation has betrayed persons in the vigour of life,

and in the full tide of lively spirits ; not in the decline of their days, under the infirmities of 70 years, and with spirits subdued and tempered by the habitual contemplation of serious subjects. The prize also for which this dexterity has been exercised has not been money, but some article of dress or ornament, as lace, jewellery, or the like.

2. With respect to the time, place and circumstances of the alleged theft, it may safely be affirmed that the annals of all the criminal courts in the kingdom furnish no parallel to the supposed hardihood or incautiousness of a woman's stealing at noon-day, in the midst of witnesses of every description, out of a box held up to public view, with the eyes of many of the witnesses directed to it by the very occasion which brought them together ; stealing the only article of one description in that box, marked by its singularity, and inevitably certain to be missed ; neglecting the only chance of stealing unobserved, when her hand was once in the box, as every other person's was, for the purpose of depositing her donation ; and attracting observation by putting it in a second time, as no other person did, and proclaiming what she had done by declaring that what she had taken was her own, though the very persons who heard this had seen, and were likely to have seen, the note in the box before she came up.

If the time and place would have repressed the inclination of an ordinary person to steal, still more would it have repressed such an inclination, if it could possibly have been felt, in the lady in question. If ever there was a time when the fear of public reproach

and the desire to sustain that character which she had so long enjoyed, would operate with more force than at any other, it would be this, when she was surrounded by the friends who knew and esteemed her: if ever there was a time when the principles of piety instilled into her from childhood, and constantly acted upon through her life of seventy years, could have had undisputed and undivided possession of her mind, it must have been at the moment when she was quitting the temple of her God, contemplating the reward promised to a faithful course of religious obedience.

3. With respect to the third consideration, it has never been pretended that in any part of the transaction upon which the accusation of theft is founded, the party accused showed any embarrassment or confusion, though it would have been almost impossible for her to have prevented a sense of guilt, if she had felt it, from betraying itself in some symptoms of this nature. Nor did any contrivance or anxiety appear to avoid observation or detection; but on the contrary a perfect disregard of every opportunity of secrecy and concealment. She does not wait till there are several notes in the box, and take one of the uncertain number, when the loss might have been unperceived, or incapable of proof, but takes the only note in the box, the disappearance of which is instantly marked, and could never, with a chance of gaining credit, be denied; she does not take it when her hand is supposed to be in the box for the purpose of depositing her donation, and when curiosity would be unawakened as to her object or her conduct; nor secretly grasp it within the middle of her hand; but di-

stinctly puts in the hand a second time, undisguisedly and unequivocally for the single purpose of taking out the note ; shows it as she raises it ; and avows that she has taken it, alleging it to be her own. Then, having taken it, the next thing she does with it is to open it out, and examine it, in the public street ; turning her front from the wall, so that both herself and the note became visible by a great part of the crowd returning from the chapel. Could any part of this conduct further any one purpose or object which a person meaning to steal the note could have had ? Or is it possible to conceive any one such purpose or object which every part of this conduct is not calculated to defeat, and with which it is not absolutely irreconcilable and inconsistent ?

It is hardly necessary to notice the three facts brought forward, apparently to give a different colour, from that which has been here described, to parts of the lady's conduct, namely, that at the time of taking the note she looked into Mr. Deering's face ; that instead of crossing Milsom Street directly from the Chapel door to Quiet Street, she first turned a little to the left between some chairs and the wall ; and that the road through Quiet Street is not the nearest road from the Chapel to her residence in Gay Street. The first circumstance throws no light upon her intention, is only to be explained by conjecture, and admits of explanation with equal ease, though in different ways, whether she was guilty or innocent. As to her going by the wall, it is at least as probable that an old and infirm lady should choose such a road to avoid the crowd and danger of the middle of the street, as to

escape from observation, especially considering that if the road was singular, in that respect it marked her for observation, and that neither before nor after taking this road she showed any wish of avoiding observation, but the contrary. With respect to the circumstance that Quiet Street was out of the shortest road to Gay Street, as the difference is but a few yards, she might have preferred that road as least noisy or crowded, or in order to make some call ; but certainly could not have taken it for the sake of secrecy, since in this very street she turned towards the Public, and opened the note out.

The next circumstance in her conduct is her restoring the note to the owners. This she did immediately after examining it, and spontaneously. There is no ground for believing that she heard the words addressed to her by the servant, "No, Ma'am, it is not yours, you took it out of the box." Two of the witnesses admit that they did not hear them, and it is not pretended that the gentleman who held the box, or any of the other gentry on the spot at the time, did. It is unlikely that the lady should have quicker hearing than all these persons, or that, if she had heard the observation, she should have failed to take notice of it, which it is not pretended that she did in any way. And though still watched in Quiet Street, it is proved by the chief witness against her, as far as the fact admits of proof, that she did not know she was watched.

It could not, therefore, have been from an apprehension that she was detected, she restored the note ; nor, if she wished to steal it, was there any reason

why she should restore it. What her reason was can only be inferred from the time at which she turned back to restore it, which was instantly after examining it ; and from which it would appear that she found it, when she did examine it, to be something which she was not aware she had taken, and had not intended to take. This supposition requires that something should be pointed out for which it is probable she might mistake the note ; and when it is recollected that she had just left the chapel, where small advertisements had been distributed, which it is common for the congregation to take away, it is reasonable and natural to believe that at the moment she saw the folded note, it struck her imagination that it was one of the advertisements, which she had brought out of the chapel with her, and had dropped into the box in putting in her donation.

It is said by her accusers that her exclaiming, “ Oh, this is my note,” proves her to have known that it was a note, and disproves the supposed mistake. That these, however, were the precise words used by her, which is so material a part of the case, and the establishment of which seems essential to the sustaining of the accusation, would require the most positive, distinct, and indubitable evidence. At present it does not appear that the witnesses, who depose to what was said, intend to give more than the substance and effect of it ; and whether the words were “ This is my note,” or “ This is mine,” uttered in the hearing of persons who saw a note taken at the moment by the person uttering them, they would be the same in substance and effect, to the understanding

of the hearers. But the words "This is mine" in the meaning of the speaker, would intend that the thing which he supposed he held up, whether note or any thing else, was his. The probability is, that as he spoke with direct reference to something in his hand, he would say "This is mine." His object would be to declare not what it was that he held, which his hearers could see, but whose it was ; and the naming it would have been superfluous and unnatural. Surely then, if a charge of felony is to rest on a single word, for which another might with equal effect be substituted, and is more likely to have been used, every possibility of the mistake of that word ought to be strictly excluded. Surely the witnesses who were to prove one specific word in such a case ought exactly to agree in their relation, and show that they were accurate as to every word used. If they mistook one word, it would be taken that they were likely to mistake more. But there is not an exact agreement between the witnesses in this case, nor are the words related by the principal witness the same as he appears to have repeated on other occasions, particularly in the original minute of his evidence in Dr. Gardiner's writing, still extant. In his early accounts, indeed, he professed only to give the words used, "*or* words to that effect ;" and the variations in the words do not vary the effect, as the hearers would understand it. It is the easier to account for so slight a mistake as that of a single word, as the speaker and hearer were both in a crowd, and evidently spoke low, from the circumstance that several persons close to them, some of the witnesses in the case, did not

hear either speak ; and the witness Smith says, that the lady spoke in a lower tone than he did. In the minute of his evidence just referred to he represents her as “saying, in a low voice to herself, ‘ Oh, this is my note,’ or words to that effect.”

If so probable a mistake as that to which the taking of the note has been ascribed did not suggest itself to the mind, it would be quite consistent with experience to suppose that the lady both took the note, and spoke of taking it, in perfect absence of mind. Almost every body’s recollection will supply instances of persons doing and saying things unconsciously, which, if their minds had not been absent from what they did or said, they would particularly have avoided. Bank notes have been thus burnt or torn, and other blunders made, perfectly ridiculous.

But it is again urged against the lady, that, when in returning the note she said she supposed she must have taken it out of the box, she showed that she had taken it knowingly, and that nothing else could have suggested the idea of the box to her mind. This proposition seems, however, perfectly unfounded, because, if she was ignorant how the note had come into her possession, she could but make conjectures as to the place from which she had taken it ; and surely the most probable that could occur to her would be the collection box, the only place in which she was likely on a Sunday to have seen money.

Some stress too is laid on her stating that she supposed the note must have caught in her sleeve, as if this, supposing her to have taken the note by mistake for the advertisement, was a wilful misrepresentation.

But she professed only to state her conjecture, a random guess how she had come possessed of the note ; and her veracity is not impeached by its proving to have been ever so erroneous. If, indeed, her impression when she took the note was that she had dropped an advertisement and picked it up again, this was an impression not likely to remain on her mind. Either in this case, or if she took the note unconsciously, she would be likely to forget the circumstance, as persons frequently search for knives, keys, spectacles, and other objects, which they have already taken into their hands.

Persons perhaps may be found, as one unhappily has been, disposed to believe that the lady acted under a momentary temptation of the devil ; and it seems the fatal consequence of such a disposition, that the mind should resist every attempt to reconcile the facts of the case with the lady's innocence, and to establish a conclusion which supernatural agency is not necessary to account for. It might be necessary, to account for her guilt, in the absence of any motive conceivable by human reason, and in opposition to every principle deduced from human experience. But it seems an abuse of the reason and judgement which God has given to his intelligent creatures, to decline their guidance in first endeavouring to ascertain whether she ever had an intention of stealing the note, as far as that guidance leads ; and it seems to lead to a satisfactory conclusion, and in the lady's favour. For all the facts of the case are easy of explanation, natural, and consistent, on the supposition of her innocence ; inexplicable, unnatural, and inconsistent, on

the supposition of her guilt. That a person of spotless character should mistake one paper for another, and by mistake, supposing it to be his own, or unconsciously, and in absence of mind, should carry it away, and upon an examination which gave an opportunity of ascertaining what it was, should instantly restore it, is an occurrence not contrary to reason or experience, or in any of its parts inconsistent. But that such a person should commit a theft, forgetting in a moment the religious and moral principles and habits of seventy years, should commit that theft, without motive, under the eyes of a crowd of witnesses, make a public exhibition of his booty, and spontaneously, without demand or suggestion from any other person, give it up, and restore it, is a supposition inconsistent in all its parts, contrary to all reason and experience, improbable, and unheard of.

WELLS ASSIZES

THURSDAY, *Aug.* 17, 1820.

SARAH BINGHAM, *Plaintiff,*

AGAINST

The Rev. JOHN GARDINER, D.D., *Defendant,*

Before the Honourable Mr. Justice BURROUGH, and
the following Jury: viz.

SPECIAL JURORS.

Sir THOS. BUCKLER LETHBRIDGE, Bart. M.P.

WM. DICKENSON, Esq. M.P.

GEORGE PENROSE SEYMOUR, Esq.

WM. CLARKE, Esq.

VINCENT STUCKEY, Esq.

JOHN PURNELL, Esq.

WM. M. DODDINGTON, Esq.

TALES.

JAMES CLOTHIER, Gentleman.

EDWARD OLIVE, Dyer.

RICHARD AYRES, Gentleman.

JAMES CARY, Clothier.

WM. BISDEE, Gentleman.

MR. ADAM opened the Pleadings. The declaration charged the Defendant with composing and publishing several malicious libels, imputing to the Plaintiff

that she had committed a felony, in two letters, with the signatures of "Vindicator" and of "Clincher," published in the Bath and Cheltenham Gazettes of the 24th and 31st of May 1820. The Defendant pleaded 1st Not Guilty, and 2d a Justification, that the Plaintiff had committed a felony in the manner stated in the alleged libels : upon which pleas issue was joined.

Mr. Serjeant PELL addressed the Jury on the part of the Plaintiff. He said that never was his mind more sensibly impressed with anxiety, never did he feel himself more incompetent to conduct a cause, than at this instant. Whether it was the character of the Plaintiff, or of the Defendant, that was considered, or with reference to the public interests, the question was of the first magnitude. The Plaintiff was a lady of a most respectable family. The Defendant was a gentleman belonging to the church, and of as great respectability as the Plaintiff; and nothing had he to say with reference to the Defendant's conduct, more than belonged to this case. The Plaintiff resided in Gay Street, Bath, and had resided there for many years. She was more than 70 years old, and had never been married. She was the daughter of a clergyman in Dorsetshire, whom she had had the misfortune to lose. The Defendant was the proprietor and minister of the Octagon Chapel, Bath, and had for many years officiated there with honour to himself, and benefit to the congregation. The father of the Plaintiff had happily, as he had stated, been long dead ; he said happily, for, if he had been now living, he could not have survived the disgrace of the present proceeding, the painful nar-

ration of this day. The circumstance which gave rise to the action took place on Sunday the 14th of May last. The Plaintiff attended that day at the Octagon Chapel, where a sermon was preached for the benefit of the National Schools. She had for many years been a constant attendant there, not merely on Sundays, but at the services of the week, a most exemplary instance of a woman's performing her religious duties. And certainly nothing could be more miraculous, than if it should be believed that such a person had done any thing to endanger her character here, or her happiness hereafter. When the service was over, the Plaintiff, passing by the gentleman who held the collection plate, deposited her contribution, and it will be said that at this time she took from the plate a one-pound note, intending to commit a felony in taking it. The first public notice of this occurrence appeared in the Bath and Cheltenham Gazette of the 17th May, the Wednesday after the sermon. It was in the following terms.

“*Extraordinary Occurrence.*—On Sunday morning a Sermon was preached at the Octagon Chapel, in this city, for the benefit of the National Schools; and after the service, a collection was made at the doors of the chapel. During the collection a gentleman's servant, who was standing in the passage, asserts that he observed a lady secretly take a bank-note from the box holden by one of the gentlemen to receive the deposits of the charitable. He further asserts, that the lady, perceiving she was observed, muttered, as she passed him, ‘It is my own note.’ The man instantly replied, ‘No, Madam; you took

it out of the box.' The man goes on to state, that the lady then passed on, endeavouring to mix with the crowd, but he followed her so closely, that, on reaching Quiet Street, and still finding him at her heels, she returned back, and making her way to the Vestry-room, exclaimed, 'I have discovered a one-pound note in my sleeve, which I suppose I must accidentally have taken up when I put my donation into the box.'—The servant-man who witnessed the transaction, having related it to his master, was by him directed immediately to inform the gentlemen who managed the collection thereof, which he did; and his master has since borne testimony to his strict veracity and integrity. Some corroborating circumstances are said to have come to light: notwithstanding which the lady persists in asserting her innocence, and her accuser as resolutely persists in asseverating the truth of his accusations. The accused is said to be a lady of considerable fortune, and moving in the first circles of fashion. If she be falsely charged, we know of no punishment severe enough for the wretch who has dared to blast her fair fame: but if, on the contrary, she be guilty, then her rank,—her station,—her fortune,—all, all, are aggravations of her crime!—What! in the solemn temple of her God—after hearing and responding the prohibition of the Decalogue, *Thou shalt not steal*—meanly and sacrilegiously to filch the alms of the pious, intended for the instruction of the poor and the ignorant! Forbid it, Heaven! Let us hope such a being exists not: let us hope that some satisfactory explanation, substantiated by proofs, may yet remove the

condemnation of so foul a charge ! But, should the accusation be established, let not the adventitious circumstances of rank and wealth, with which the culprit may be invested, for an instant impede the course of even-handed justice !

“ Since writing the above, we have been informed, from the highest authority, that the accused is a lady of the strictest honour and most unimpeachable veracity ; that all her friends consider her wholly incapable of an act so horrible : that they fully acquit her of any ill intention, and are convinced that the circumstance was wholly accidental.

“ We understand that a thorough investigation of this mysterious affair is likely to take place ; and we express our sincere hope that the innocence of the accused party may be clearly made manifest.”

The learned Counsel proceeded to say, that he was not this day disposed to attack the veracity or the character of the servant, or to say that he intentionally or knowingly meant, either at the time or since, to blast the character of this lady. The article in the Gazette was inserted under the authority and by the direction of the reverend Defendant. This he undertook to prove, and it was an important feature in the case. Considering the Defendant's situation, as a magistrate and the minister of this chapel, if he really thought the Plaintiff guilty, this was not the way to make it known. Nor, whatever might be the result of this trial, would the Defendant reflect with satisfaction on what he had done. The course that he adopted was contrary to his duty.

The next thing was a letter in the Bath Chronicle,

of May the 18th, addressed to the Editor of the former paper. It was a letter from the Plaintiff's nephew, Mr. Edward Bingham*, written in vindication of his relation's honour, stating the reasons which induced him to think that the act, whatever it was, was not accompanied with a felonious intent, and speaking strongly of those persons who he thought were instrumental in bringing forward the charge. In the same paper was the following paragraph:—"We are requested to state, that the paragraph in the Bath and Cheltenham Gazette of last night, relating a transaction said to have taken place in the Octagon Chapel, was not inserted by the authority or with the knowledge of the Minister of that chapel."

The learned Counsel expressed his regret that he had to charge on this reverend gentleman, that this statement was not truth. He knew that he stood on tender ground when he made this charge against a clergyman, but he should be able to prove it. He should show that this article was inserted by his order, and that the former was dictated by him. And he repeated, that he was satisfied the Defendant would have no reason to congratulate himself on the part he had taken.

The next thing to be mentioned was a letter written by the Defendant in a feigned hand, and sent to the Plaintiff.—"You have many friends"—she would have, the learned Counsel observed, the support, the consolation, and the proud knowledge, that by this transaction she had never lost a single friend—"You have many friends, take the advice of a true one; be off,

* See page 20.

or a —— will be your fate; the plot thickens.” Could it be a minister of God who thus wrote to a lady in a feigned hand? Was this the conduct which he would in his cooler moments think it right to have pursued on such an occasion? Here was a lady of his own congregation, whom he must have seen in the constant performance of her religious duties, and this was the way in which he chose to intimate to her his opinion of this affair.

There was another circumstance which showed great duplicity and deceit on the Defendant’s part. A gentleman of the Bar, the Plaintiff’s relation, went from London to have an interview with the Defendant. He saw him on the Sunday after the publication of these newspapers. He was assured by the Defendant that his mind was perfectly satisfied; and he said, “Only wait till Wednesday, and a statement will appear with which you will be satisfied.” The gentleman accordingly returned to London, hoping that the cloud was removed. But on this Wednesday, the 24th of May, appeared another libel, worse than had appeared before. He should not read it, as the Jury would hear it from the officer: but there was one passage which showed that the Defendant employed himself in other occupations than those which belonged to his sacred office. There was something in it so dreadfully wicked, with relation to past occurrences, that the learned Counsel could not forbear from expressing his feelings on the subject. It was this: “Thus, of the following instances, it (character) saved one at least from transportation; but it could not shelter from public obloquy and indignation a Dr. Schomberg, an eminent and skilful physician;

a Mrs. L—— P——, a sweet, amiable, and accomplished gentlewoman ; a Mr. Hurst, of saccharine notoriety ; and many other melancholy instances of the depravity of our nature, with other moral phenomena, fresh, perhaps, in every one's memory."

Here was gall of unusual bitterness ; here was hatred carried beyond the grave ; and the offences of those ripped up, who, if they were guilty, were gone to answer at the tribunal of another world. Here was a display of humour—a joke—a clergyman descending from the grave tone of the temple of God to the joke against "Mr. Hurst of saccharine notoriety."

The last thing was a letter in the Bath and Cheltenham Gazette of the 31st May, signed "Clincher*." The learned Counsel read the letter. Could any thing be more offensive than this ? Here were the ordinary arguments in favour of revealed religion, and collected with sufficient accuracy, brought forward on the most improper occasion, and with a signature implying a vulgar joke. It were to be wished that a clergyman would drop all appearance of levity in referring to such matters, and abstain from all appearance of jocularly.

In consequence of these papers, the Plaintiff had but one course to adopt,—either to submit to the accusation made in them, or to discover the author of them, and bring the case before a jury of her country. In the confidence of innocence she had appealed to a jury ; the Defendant had accepted the challenge, and the question was now to be determined. It would be sufficient for the Plaintiff in the outset to show, that the Defendant was the author of the libels, and it

* See page 36.

would be incumbent on him to substantiate his charge. Still, as the circumstances appeared on the record, it would not be improper shortly to remark upon them. The Defendant's account was, that during the collection after the charity-sermon, a gentleman's servant observed a lady secretly take a note from the box, and that as she passed him she muttered, "It is my own note;" that the man replied, "No, you took it out of the box;" that the lady passed on to Quiet Street, where, finding him still at her heels, she turned back, and making her way to the vestry, exclaimed, "I have discovered a one-pound note in my sleeve, which I suppose I must accidentally have taken up when I put my donation into the box."

Now, suppose all this proved; here was a lady of 70, of good fortune, of respectable situation, living in Bath, constantly attending the chapel; observed by a person to take a paper out of the plate, to pass on, to look at it, to return, and deliver it to the gentleman; and it was to be believed that she was guilty of a felony. Was there nothing in the transaction which would lead to a belief that the thing was accidental as related by the servant himself? She could have no witnesses; it was not possible that she should. But it would be proved that there were papers distributed throughout the chapel; they were in every pew; and he held the very paper which was in her pew, and which she took away with her. The fact of course could not be proved, but the inference would be left to the Jury, that she took one of those papers away with her. At all events they would find, that in the street, opening her hand, and seeing a paper there which she

did not expect, she returned. Could it from these circumstances be believed that she took the note intending to steal it? Would it not be believed that she took it in any way rather than with an intent to steal, either as one of the papers placed in the church, or from its accidentally adhering to her sleeve? If the Defendant believed her guilty, it was his bounden duty, if he chose to notice it, to notice it as a magistrate. He was challenged to do so; and it was extraordinary, after the parade of her fortune, rank, and character aggravating her guilt; after the display of a crime committed in the temple of her God, he chose to take the course which this day exposed him to the charge of being a libeller. If the Jury should be satisfied she was not guilty, she wanted not damages. If they gave her her character, they gave her all she desired. It was indifferent to her whether the damages were ten pounds or ten thousand pounds. She had no wish to put a farthing of Dr. Gardiner's money in her pocket. She had not many years to enjoy the wealth of damages; but she wished to go down to the grave with that character which she had always preserved; to receive from the Jury the proudest consolation at the dying minute, of sinking into the grave with her character unimpeached.

The learned Counsel concluded, and sat down, in tears.

The first witness, HARRY LEE, Esq., was called, and examined by Mr. GUNNING.

I live at Bath. I have an estate in Shropshire. I was at the Octagon Chapel on Sunday, the 14th of

May. A sermon was preached there for the benefit of the National Schools. Hand-bills stating the object of the sermon were placed in all the pews, and generally are on such occasions. This (looking at a hand-bill which was given to him) is one of them. The hand-bills are frequently taken away by the congregation. I frequently take mine. I saw the box in which Mr. Deering was collecting after the service. I remember it perfectly. It was an open box, with a handle. I saw a note in it. I particularly remarked it. It was crumpled up; and the corner standing up. There were silver and copper in the box.

Cross-examined by Mr. MOORE.

The hand-bills placed in the pews are clean, and not in the state of that now produced. What I saw in the box had the appearance of a note. I did not go very early out of the chapel. Many persons had previously gone out. I know Miss Bingham. I did not observe whether she went out before me.

Re-examined by Mr. GUNNING.

I have known Miss Bingham for sixteen years intimately. There cannot be a better character existing for integrity, probity, and honesty. I have had some acquaintance with her forty years.

Mr. HENRY SMITH called.

(This witness claimed a release of actions by Mrs. Bingham before he should give his evidence; and was

assured by Mr. Serjeant Pell that he should have full satisfaction in that respect. He was then examined by Mr. ADAM.)

I am one of the proprietors and editors of the Bath and Cheltenham Gazette. I know Dr. Gardiner. I published that article (looking at the Bath and Cheltenham Gazette of the 17th May, which was handed to him, containing the "*Extraordinary Occurrence*"). I saw Dr. Gardiner previously on the subject. I received several contradictory statements on Monday, and in consequence I waited upon Dr. Gardiner. I told him we had received several contradictory statements, and requested him to set me right, if what I stated was erroneous. He said he had rather have nothing to do with the publishing of the fact. I told him it would be expected that some statement should appear, and requested him to set me right if I was wrong. I stated the case as it had reached me, and the Doctor pointed out where I was in error. In consequence I published the statement in the paper of the 17th. I produced to Dr. Gardiner a letter which I had received, and read it to him, and he set me right in those points which were incorrect. That letter was never published. I went home and made the statement in conformity to Dr. Gardiner's correction. This (producing a written paper) is the manuscript of the letter signed "Vindicator." It is in Dr. Gardiner's hand-writing. I have been much accustomed to see his hand-writing. I have frequently printed from his manuscripts. I have seen him correct a manuscript. This letter was inserted by his order. There appear to be many corrections upon the manuscript. Dr.

Gardiner saw the proof. He made a vast number of alterations on the proof-sheet. He called at the office while the article was printing, to make corrections. I received the manuscript early on the Monday morning.

This (producing another written paper) is the manuscript of the letter signed "Clincher." It is in Dr. Gardiner's hand-writing. The writing is rather more upright than usual, rather more formal and stiff. Dr. Gardiner uses two styles of writing. I have seen two styles in the same manuscript. I received the manuscript signed "Clincher" by the Bath penny post. Dr. Gardiner has admitted to me that it was his. He admitted it without any question being asked.

This (looking at the anonymous letter handed to him) is in Dr. Gardiner's hand-writing: he has admitted to me that it is his.

Cross-examined by Mr. WILLIAMS.

Dr. Gardiner declined seeing my statement.

Re-examined.

The letter which I showed him was never published. The letter signed "Vindicator" was in answer to one of Mr. Edward Bingham's.

Mr. RICHARD CRUTWELL examined by Mr.
GUNNING.

The letter signed "Edw^d Bingham" in this newspaper (looking at the Bath Chronicle of the 18th of May) was published by Mr. Bingham's direction.

This (producing a written paper) is the manuscript of it. There is another article in this paper published by direction of Dr. Gardiner. This (producing a written paper) is the manuscript of it. It is in Dr. Gardiner's writing. It was brought to the office by himself.

HENRY DEERING, Esq. examined by Mr. ADAM.

I live at Bath, in the Circus. I held one of the boxes at the Octagon Chapel on the 14th May. I do not know Mrs. Bingham. After the collection Dr. Gardiner and I met in the Vestry to count over the money, and for me to give it to him. I remember the clerk's coming in with Mrs. Bingham. The Vestry is long, and I was at one end. She produced a note, and said that she had taken it by mistake out of the box, and came to return it. She returned the note, I believe, to Dr. Gardiner. There were four of us in the Vestry. She immediately went out. Dr. Gardiner said that I had dropped the note out of the box. I said that nothing had dropped out, and that it must have got out by accident. There were other notes in the box, from eight to ten or twelve. They were turned out on the table before Mrs. Bingham came in. They were in a crumpled state. They had been received in the course of the collection that day. Mrs. Bingham had the note open in her hand when she came in, and said, "I must have taken this by mistake." We did not ask her any questions. She said no more.

Examined by Mr. STUCKEY, a Juryman.

The note was brought back within ten minutes after the collection. It was not ten minutes. There was a great crowd at the chapel. There is only one door. The congregation may be a quarter of an hour or more going away. They were all gone.

PEREGRINE BINGHAM, Esq. examined by Mr. Serjeant PELL.

I am nephew of the Plaintiff. She is more than seventy years old. She is a daughter of the Rev. George Bingham of Pimperne, Dorsetshire. She has lived at Bath, I think, about twenty years. Her father has been dead about twenty years. She lives upon her own property. She lives in lodgings in Gay Street, with one maid-servant. She has all the upper part of the house. She was never married. She lives entirely upon her own fortune. I have a distinct recollection of her living with her father before she came to Bath. I have known her from the earliest period of my recollection. I never heard, and cannot conceive, any character to be higher than hers. I know Mr. Edward Bingham ; he is my brother ; he is a lieutenant in the Royal Navy.

I remember very distinctly seeing Dr. Gardiner in May last at Bath, in his own house. It was on the Sunday preceding the publication of the letter signed "Vindicator." The occasion of my seeing him was the publication of the letters respecting Mrs. Bingham. I had come from London expressly on this business,

having been sent for by my brother. When I first saw Dr. Gardiner, I told him I was come as Mrs. Bingham's legal adviser. It was about an hour before church time. He expressed great reluctance to see me, and almost refused, on account, I believe he said, of his having to prepare for his religious duties. He was in his canonical dress. I told him that I should not detain him two minutes, and proceeded. I said I had been credibly informed that he was the first person who had expressed any doubts touching the nature of the transaction that had occurred at the Octagon Chapel; that I had also been informed that he continued still, by words and gestures, to express those doubts: I then requested him, if he still continued to entertain those doubts, that he would either himself go before the chief magistrate of Bath the next morning, or that he would exercise the influence he had over Smith, the accuser, and induce him to go before the chief magistrate, and make a legal charge against Mrs. Bingham, as I had no means of meeting with Smith; and I requested that it might be done the next morning, as my time in town was very valuable, and I wished to return. I further requested that, if he had ceased to entertain those doubts, he would, in justice to the lady accused, publicly announce that he had ceased to entertain them. Dr. Gardiner's answer, as near as I can recollect, was, "The business is no longer in my hands," or "is out of my hands; I cannot do any thing in it," and he made use of expressions of great pity and commiseration towards me. I replied by again pressing him as earnestly as I could to appear before the mayor, and

make a legal charge. The Doctor repeated his expressions of pity, and that he could not stir in the business. I then said, that as I could not prevail on him to move in the business, I should consider, as the only thing left for me, the expediency of summoning Smith before the mayor, the next morning; to which the Doctor replied, "You had better wait till Tuesday, when a statement will appear with which you will probably be satisfied," or "which will probably be satisfactory," I cannot say which, I rather think the former. I know that the letter of "Vindicator" appeared in a paper which is usually published on a Tuesday evening. This conversation was on the Sunday preceding the publication of "Vindicator." I then took my leave, perfectly satisfied, and left Bath the next day, and did not summon Smith.

Cross-examined by Mr. MOORE.

I think my aunt told me that she had had an interview with Dr. Gardiner, previously to this, at his house.

Examined by the JUDGE.

No notice was taken of this circumstance in any conversation with Dr. Gardiner.

JOHN BOURNE examined by Mr. GUNNING.

I delivered a letter from Messrs. Dyneley and Gatty to Dr. Gardiner: it was on the 27th May.

This letter was produced by the Defendant's attorney, pursuant to notice given him.

Colonel ~~JOHN~~ BINGHAM, Dorset militia.

I am first cousin to the Plaintiff. Her father and mine were brothers. I have known her almost seventy years, from the first moment of my memory. I was almost always in Dorsetshire, when she lived with her father ; and she has been often at my house since she lived at Bath, and I have seen her at Bath. Her character is most exemplary, I think no woman's is more so. I think her the last woman in the world who would have done such a thing. She was brought up by her father to a strict discharge of her religious duties.

WYNDHAM GOODDEN, Esq.

I live at Bath. I have known Mrs. Bingham thirty years. She bears the highest possible character for integrity and honour.

EDMUND MORTON PLEYDELL, Esq.

I live in Dorsetshire. I have known the Plaintiff nearly fifty years. She has borne the most exemplary character during the whole period. It is impossible for any lady's character to be held in higher estimation.

JOHN SHUTE DUNCAN, Esq.

I am a Fellow of New College, and live much at Bath. I did belong to the bar. I have known Mrs.

Bingham seventeen or eighteen years. I have had opportunities of knowing her character, and have always esteemed her a lady of great probity and piety.

PHILIP BURY DUNCAN, Esq.

I am a Barrister and Fellow of New College, and am much at Bath. I have known the Plaintiff the same time as my brother, and esteem her a woman of the highest rectitude and moral character.

Lieutenant-General JOHN MITCHELL.

I live at Dewlish, Dorsetshire. I have known the Plaintiff forty or fifty years. I knew her intimately at her father's. I do not believe there is a more estimable woman alive, for honour, probity, religion, and in every point of view.

SIR GEORGE BINGHAM, K.C.B.

I am a major-general in the army. I am a relation of Mrs. Bingham's, and have known her as long as I can remember. She was the intimate friend of my mother, and I believe there never was a more honourable, virtuous, or religious woman.

WM. PARRY HODGES, Esq.

I am receiver-general for Dorsetshire. I have known Mrs. Bingham a great many years. I have

always considered her to be exemplary for honour, probity, and religion.

REV. JOHN HELYAR.

I live much at Bath. I have known Mrs. Bingham more than thirty years. I have been often at her father's house, and may say that I never lost sight of her. Her character has always been most excellent.

The papers proved and put in were the following, viz.

The article headed "*Extraordinary Occurrence*" in the Bath and Cheltenham Gazette of the 17th May*.

The article, "We are requested to state," &c. in the Bath Chronicle of the 18th May†.

The following letter from Mr. Edward Bingham, published in the same Bath Chronicle.

"*To the Editor of the Bath and Cheltenham Gazette.*

"BATH, Wednesday 17th May, 1820.

"SIR,

"I have to address you relative to 'the extraordinary circumstance' published in your Gazette of this day's date. The lady whose acknowledged 'fair fame' has been attempted to be blasted by such a monstrous foul charge, has attained the age of seventy, without ever having been suspected of the least error derogatory to the honour and integrity inherent in the bosom of the most perfect gentlewoman and true Christian; her conduct through life has endeared her to

* See page 3.

† See page 6.

a respectable family, to which she is an ornament, and does honour by every deed. However, I state this, merely to show the absurdity of such a notion, that after following, for the age allotted to man, the *right path* in which she was trained, it can be probable or possible she should now take a wrong turning; that one whose proud sense of duty would support her through all earthly difficulties, were they to befall her, and who, by her past life, may joyfully welcome death, should now begin to act that part which inflicts misery here, and torments unknown to eternity hereafter; when, at such an age, it is more likely people would *increase*, than *begin* to abate, their preparations for the next world.

“ But at once to enter on the important task of pointing out where the testimony of the gentleman’s servant is erroneous, which I hope to do, and even that he has himself differed in one account of the affair which he gave before me, and the one published as what he had asserted: I yesterday was obliged by the man’s being allowed to give his account to me of the affair, which I had been induced to request, that I might the better oppose the overwhelming loads of tales which I understood to have burst forth in every quarter. The man positively stated, that the lady on taking the note up (as he said), asked, ‘Is it my note?’ when he answered, as is stated, ‘No, madam; you took it out of the box.’ This differs with her having said ‘It is my note:’ besides, that one was avowed to be said on taking up the note, the other, on her passing him. In your paper it is further stated, that “ the lady, on reaching Quiet Street, *still find-*

ing him at her heels, turned back, and making her way to the vestry-room, exclaimed, ‘I have discovered a one-pound note in my sleeve, which I suppose I must accidentally have taken up when I put my donation into the box.’ In reply to this latter part, I can say, that, before myself and others, the man clearly and unequivocally avowed that he could not swear the lady had known he spoke to her; and, therefore, how can he state that his being at her heels caused her to turn back? Even what passed in the vestry-room is stated to be also on his information, which assists to carry on the plausibility of a story to show an intention to do wrong, but arising merely from an unfortunate but accidental occurrence.

“I will hope that the least contradictory difference in the testimony of an accuser, must be taken as a favourable, if not a conclusive, circumstance, to prove the innocence of the accused; and that an oath is not to be taken upon what a person believes and supposes must be the case, as being so; such an oath surely is false, and the person who takes it a horrid perjurer; and that also, if any person will swear to the truth of a thing which there is an impossibility of his being certain of, that person’s evidence surely shall not take away the life, or, what is as dear, the fame and character of another fellow-creature. Now, on this last head, I think what follows is to the purpose: The servant stated he would swear the lady had not any thing contained in her hand at the time he says she took the note up. (*Yet she had.*) At any rate, how could he be certain of it? Let any one try, by holding something in their hand, if it cannot be con-

cealed while they take up something else : it can be done very easily. Yet he will *swear she had nothing* in her hand, although *he* in a crowd, and liable to a mistake. Surely there is an uncertainty ; and who, where there is, would plunge on unmindful of the dreadful punishment to another, by swearing heedlessly through thick and thin ?

“ It is also stated, in support of this dreadful charge, that the servant has a character from his master for strict veracity and integrity. It was his interest to behave well, and to please his master ; as the play says, ‘ If you don’t know you have a good servant, I know I have a good place, and won’t turn out.’ His having done so need not have been stated previously to any inquiry, to heighten the colouring of a charge, which at this rate, *in these times*, may fall on any of those whose station in life may point them out as objects of attack to any persons of diabolical and malignant feelings to all who are placed in greater affluence. His character as an accuser from one is not to be taken to the injury of another, who is so highly considered, not by one, but by many and many ; by all, both high and low, by whom she has ever been known, by both rich and poor ;—friends who will now avail her, who are ready to speak to her good deeds, and to stand by her through all the fearful trials that may await ungenerous, unfeeling, and illiberal calumny.

“ Innocence must clear itself ; and it is prayed, the charitable, the liberal, and the generous-minded will not form a judgement from an inveterate attack, but yet await the event.

“ Having now noticed the paragraph in your paper, I wish to state the ‘ plain, unvarnished tale’ of what has been so publicly misrepresented.

“ The lady not having money in her hand on going out of the chapel, put her hand into her pocket to take out what she was to contribute ; holding a parasol in one hand, and a small smelling-bottle and a folded paper in the other. She put the money she had taken for the purpose into the box, and passed on. In Quiet Street, on using the smelling-bottle, she observed a paper adhering to the sleeve of her pelisse, which, on examining, proved to be a Devizes one-pound note ; she supposed it must have caught to her sleeve from the box, and instantly returned to deliver it at the chapel. The crowd was still great, which when dispersed, she went in and stated the fact to the clerk, and with him went into the vestry-room, and delivered the note, with an explanation of the circumstance, and never expecting to hear more of what had so very unintentionally occurred. The man’s speech to her she had not heard, nor noticed him ; nor had she asked if, nor said, the note was hers.

“ This is the plain story ; and why is it to be inferred, as is stated, her return was from seeing she was watched, and not from the right motive of acting an upright and conscientious part ? Who can *swear* that ? Yet it forms part of the tale. Why did not the man even touch her, if he saw she did not attend to what he said ? Whatever motives have actuated him, he has judged hastily and harshly ; but surely his report cannot be credited by any persons who will judge fairly and candidly. Can any body

believe that any one in their senses, however inclined to do evil, would in so public (*not secretly*) a way accomplish their intention? It is sincerely hoped all that is now stated will have a counter effect to what has appeared in your paper. I will not think so uncharitably of the world's charity, as to suppose many will disbelieve the story here told. The injured and traduced lady, brave in conscious innocence, seeks no privacy or concealment, and her friends will accordingly take the best advice to clear her from such unjust charges.

“This statement, it will be perceived, has been made by one totally inadequate to such a task; without the wit and cunning of a cultivated mind, so necessary in the defence of so foul a charge; but not having another relation on the spot, he was urged by his feelings to say what he has done; meaning by no means offence to any; but, if possible, by his humble means to serve a deeply injured lady, to whom, Sir, he has the honour to be nearly related.

“E. BINGHAM.

“*Bath, May 17.*”

The letter signed “Vindicator” in the Bath and Cheltenham Gazette of the 24th May.

“EXTRAORDINARY OCCURRENCE.

“*To the Editor of the Bath and Cheltenham Gazette.*

“SIR,

“Considering the affinity of the parties, no one can read without emotions of pity and concern *Mr. Bingham's* manly and affecting address to you in the last

Bath Chronicle; and had he been content with a serious vindication of a supposed injured relation, had he only conferred on her his eulogium, expatiated on the improbability of such a pattern of virtue having any affiance with vice, and then have given his plain ‘unvarnished tale,’ so *publicly misrepresented*, I never would have disturbed his quiet. He should only have received from me this blessing on his efforts, *valeant quantum*. But instead of pursuing this straight path, he has unfortunately travelled out of it; he has indulged in a strain of levity respecting one whose character is as dear to him as his relative’s is to her, although he happens to move in a subordinate sphere. Whatever sympathy therefore with *Mr. Bingham*, and indulgence towards his arguments, considering his peculiar situation, we are bound to manifest, his letter cannot fail to remind us of two good old sayings—‘that it is dangerous to meddle with edge tools;’ and ‘that sweet friends are often worse than bitter foes.’ From his knowledge of human nature *Mr. Bingham* must be sensible that the application of a flippant quotation, or the direction of a facetious remark, to a humble servant, by one greatly his superior, is often quite sufficient, in a city like this, to render an upright man the victim of irony, satire, and detraction, if not an object of serious condemnation, of reproach, and odium. As we ought to be just before we are generous, so we are bound to be equitable before we are charitable. Where justice to one party ends, charity to another only can begin.

“In adhering to these principles, let us take a cursory view of a recent transaction, as far as the facts

attending it, in which the informer is concerned, have been given to the public. Stripped of all intricacy or chicanery, his ‘plain and unvarnished tale’ will be found to differ a little from that of Mr. Birmingham.

“A servant sees a lady deliberately take with her hand or fingers, *not with any part of her dress*, the *only* note in the collector’s box, which lay at the bottom of it, and which she could not have put in herself, muttering at the time, ‘*This is,*’ or ‘*It is my note.*’ Struck with so singular an act, from a natural impulse he instantly accuses the perpetrator of it—one who was an entire stranger to him, and that in a voice sufficiently audible, and which he verily believes must have been heard by the party, ‘No, Ma’am, that is not your note ; you took it out of the box, but you never put it in.’ To this no answer was made, but the lady instantly hurries away through the crowd. The man pursues her, and never loses sight of her, with the natural desire of discovering who she was. On looking earnestly at her in the beginning of *Quiet Street*, she opens her hand, in the palm of which he a second time distinctly sees a note, and which was not *attaching to any part of her dress*. The servant, filled with indignation and astonishment at such an act of depredation, immediately communicates it to his wife and others, as he walks up the street, and to his master on his return home ; who with propriety orders him to mention the circumstance to those whose duty he conceived it to be to investigate the matter. These are the few simple facts in which alone the servant is concerned, and which I under-

stand he is ready to confirm by his oath before a magistrate. And were he actually to do so, the magistrate has no discretionary power : he is not allowed to exercise his judgement on the *probability* of a felonious act, derived from a consideration of the character or consequence of the person committing it ; an act obvious to the senses, on which a witness cannot be mistaken, and to which he offers precisely and distinctly to depose. The magistrate is left only to form his opinion of the credibility of this witness ; he is bound to investigate and sift minutely every thing relative to his character, to see if his veracity can be impeached by tracing his conduct to malice, to a desire of base lucre, or any other unworthy motive ; and if nothing of all this transpire so as to militate against the accuser, the magistrate is obligated to take his deposition, and issue his mittimus against the accused. Whether it is probable that when there was but one single note, and that lying at the bottom of the box, the said note could be taken up by the cuff of a sleeve, and carried through a press of people to a distance of seventy or eighty yards without dropping ; whether the lady said, ‘ Is it my note ? ’ or ‘ It is my note ; ’ and how far this establishes a contradiction in the evidence, as Mr. B. unfortunately labours to show ; whether the man was heard or not to address her, by the lady herself or any one else—all these and other queries are of an adventitious or subordinate nature, very proper to be taken into consideration, and to have their full weight ;—but a magistrate will exceed his duty if he suffer himself to be influenced by them. They must be re-

ferred to a superior tribunal, and left to the decision of a Jury. He is bound to take the deposition of the accuser, and issue his mittimus against the accused, however respectable may be the person. What, then, is the result? That Mrs. B. now owes her present freedom (which I pray God she may not abuse) to the mercy of that very man at whose character, by more than one insinuation, her relation has imprudently levelled a shaft. Sir, I do not hesitate to say, that if the same heavy charge had fallen on a housekeeper or servant-maid on going out of the chapel, the poor creature, instead of being blessed with an elaborate defence in a newspaper, would have had before now to bewail her fate unpitied, and even reprobated by an unfeeling multitude, within the confines of a prison. And let me add, it is no small credit to this man-servant, that he still maintains his forbearance, after having undergone (as I have heard), not before magistrates, but eight or ten private gentlemen, constituting a committee, as acute and rigid a cross-examination as could have been carried on by any ingenious advocates in a court of justice; although, according to the principles I have laid down, he might have refused to answer almost every one of the questions which were put to him. However, after more than half an hour dedicated to this fiery ordeal, he came forth without a singe—nothing transpired to invalidate his testimony. Subsequent to this, *Mr. Bingham* tells us that he himself, with another gentleman, examined him. And I believe they will not deny that, supported by a consciousness of the purity of his motives, he acquitted himself with the same

manliness and decorum as at the above-mentioned meeting. As to his credibility, although of an inferior station, his character stands as high in the estimation of all who are enabled to judge of it, as any independent member of society; even the author who has publicly and incautiously attempted to impair his veracity. He has lived with one master more than twenty years, who has that opinion of his principles and integrity, that he would entrust him with untold gold. If, then, this is a true description of the deponent in question, let it be remembered that forbearance has its limits: and I sincerely hope that no more provocation will be given to induce him to adopt a measure which must be so painful to himself and others.

“ I heartily give the most implicit credit to all that Mr. Bingham has so beautifully and pathetically stated on the amiable qualifications of his relative; and that a person of such eminent virtues, so highly gifted in mind and heart, let me add, allied to those who are possessed of talents of which she may well be proud; that such a person, who must soon take a final leave of earthly things, and in full possession of all of them that can contribute to her ease and comfort in the vale of years, should be guilty of such a ‘monstrous foul deed’ as to pilfer, not from the stores of an opulent neighbour, but from the pittance of the poor—and in that very house of God where perhaps she had often heard the deceitfulness of sin, especially the odious vice of avarice, with its insidious progress and baleful effects, portrayed in strong colours—where she had been accustomed, not only on the

Sabbath, but also on other days, to make her regular offering of a voluntary sacrifice—and where she had but just risen from her knees, apparently in fervent devotion to the great Searcher of hearts—is not this a ‘circumstance so extraordinary’ as to stagger one’s faith, or rather surpass all belief? But the misfortune is, that we are driven to this distressing dilemma. In establishing the lady’s innocence, we must on the other hand believe that an honest man, as above described, could be deliberately guilty not only of calumny, but of the horrid crime of perjury—could swear falsely to facts on which his senses would not permit him to be deceived, to the entire loss of his own character in this world, without alluding to what may await him in the next—and this for what? Not from any one motive of self-interest, of worldly profit or advantage; but merely that a fellow-creature may lose her character—one whom he never knew or heard of before in his whole life! Does not this also stagger one’s faith, or absolutely surpass belief? Character, no doubt, is a precious treasure. It is a charm which may perform wonders; there is hardly any thing to which its influence may not extend—only it cannot turn black into white. Thus of the following instances it saved one at least from transportation: but it could not shelter from public obloquy and indignation a *Dr. Schomberg*, an eminent and skilful physician; a *Mrs. L— P—*, a sweet, amiable and accomplished gentlewoman; a *Mr. Hurst*, of saccharine notoriety; and many other melancholy instances of the depravity of our nature, with other moral phenomena fresh perhaps in every one’s memory.

“As to Dr. Schomberg, he had been often seen to practise his knavish tricks on the very same theatre where the recent transaction occurred ; but because it was mentioned by a poor dependant, from respect to *character* the account was repudiated with scorn. At length, however, he was watched, and so palpably detected, that neither declamation nor the cleverness of the pen—nothing but the exertions of quadrupeds could save him from the impending sword of justice. To these he instantly had recourse, and he was right ; for in a case where effrontery, perseverance in hypocrisy, and solemn, false asseverations are added to the perpetration of a heinous crime, indulgence itself may participate of the nature of sin, and become a just subject of animadversion ; which I wish, from the evidence in his possession, a certain individual may hereafter escape. *Verbum sat.*

“Entirely unknown as both the parties were to me previous to the late transaction, and as Mr. Bingham still is, I can have been influenced by no personal prejudice in sending you, with much pain and regret, the preceding facts and observations ; and I should hold myself in sovereign contempt, if I had written a single line of them with the malignant view of wounding any one’s feelings, or even from a pitiful desire of triumphing in a newspaper controversy, where character is at stake. So far from this, that although I may be driven to *act*, I never will *write* more in answer to any thing which may be said on this unpleasant subject ; and I solemnly protest, that in what I have written, I have been actuated solely by a love of truth, of justice, and impartiality. The fact

is, that I found *Mr. Bingham's* letter, which as a composition does credit to his understanding as well as his goodness of heart, had made, as might be expected, an impression on some weak minds, to the injury of an innocent person, who, as a noble example to all servants, ought to receive the thanks, not the censure, of the world*. Among other opprobrious reflections, take these: 'The fellow ought to be prosecuted.' 'Who will ever go to church on a collection-day, to have their characters sworn away by vile servants?' &c. &c. And will not servants in future smother every species of iniquity, rather than risk the being ruined by giving evidence against it, if they are not in such cases protected? No one will more readily than myself join in punishing those among this class who are guilty of dishonesty, lying, or treachery; but I will never quietly see an honest inferior trampled on with impunity. As long as I have

* "Of those who witnessed the offence, he was the only one who had the courage to pursue and announce the offender; and for this laudable act he has suffered enough. His wife, naturally timid, and in ill health, has been in a dreadful state of agitation nearly ever since; for several days had elapsed, and almost every tittle of this letter was written, before a *quarter* part of the evidence to be brought to his support was known. During all his examinations he had no reason to conclude but that his testimony would be left to itself. And here I cannot help remarking that a certain committee may congratulate themselves on unanimously adopting the very judicious resolution proposed by one of its members on Thursday last. Perhaps hereafter this committee may be induced to call a meeting to bestow some token of their approbation on this man for his meritorious conduct in the recovery of their property, and as a recompense for that inquisition before some of its members, to which he patiently submitted."

a tongue or a pen, such a person shall never want a defender, by one or both, as far as my poor abilities extend, any more than a superior. In the present case, when one or other of the parties concerned *must* go to the ground, mindful of the maxim, *audi alteram*, I felt it a duty to reply to *Mr. Bingham*; but my object has been merely to put the beam on a level, and it is for the public to make that scale preponderate which its impartial and mature judgement shall direct. I am, Sir, &c.

“ VINDICATOR.

“ *Bath, May 18th, 1820.*

“ May 22.

“ P.S. In deeply deploring this melancholy business, it is hoped that it will operate as a warning to all, high and low, and convince them that the *wicked worketh a deceitful work*; what little chance there is that the perpetration of any crime can long remain concealed; and how wisely it is ordained by Providence that iniquity shall by some means or other have its reward even in the present world. To effect this, what secret springs does an overruling Power often set in motion? Should the usual means for the discovery of any sin prove unsuccessful, he will cause the sinner's *foes to be those of his own household*. Should the party injured, through indolence, compassion, or want of inclination, make no efforts to bring an offender to light, either he will commit an act of moral suicide, by making some foolish excuse, or adopting some measure which will betray him; or a kind-hearted friend will step forward, give him a shove, and plunge him headlong into the pit which he had dug indeed for himself, but which otherwise he might

have escaped. Thus, if instead of listening to rash and imprudent counsellors, Mr. B. had applied to the most natural and probable source for information, his letter would never have appeared before the public, and his relation's exposure might have been spared. It was from an earnest desire to effect this object, that a paragraph was inserted in the Bath Chronicle, which strictly true, and though not contradicting the account previously given in this paper, might bear a construction in favour of the suspected lady ; and though it could not be expected to suppress all future rumours and surmises, yet in leaving persons to entertain different opinions on a subject in regard to which there now can be but one, the tale in circulation might have passed quietly into oblivion. Such was the design of the writer of that paragraph : but unfortunately, from an indiscreet zeal in Mr. B., springing no doubt from an amiable source, this scheme by his letter was completely defeated ; *for in consequence of it the most clear and decisive additional testimony was soon volunteered from VARIOUS quarters, from servants of excellent characters living in most respectable families."*

The anonymous letter in a feigned hand resembling printing :

" You have many friends ; take the advice of a true one. Be off, or a — will be your fate ; the plot thickens."

Messrs. Dyneley and Gatty's letter to Dr. Gardiner.

" Gray's Inn, London, May 26, 1820.

" Reverend Sir,

" Mrs. Bingham has determined to seek redress by legal proceedings for the injurious reflections made

upon her in the letter published in the Bath Newspaper with the subscription of "Vindicator." Presuming that the general report and belief of your being the author of this letter is correct, we are persuaded that it cannot be your wish to impose the task of defending it upon others, but that you will rather meet Mrs. Bingham's complaint yourself, and give every facility to its being heard and decided upon. We feel it proper however, as her solicitors, before acting upon this persuasion, to write to you for a distinct avowal or disavowal of your being the author of the letter in question; and we trust you will send us an answer to this application by the return of the post.

"We have the honour to be, &c.

"DYNELEY and GATTY.

"To the Reverend Dr. Gardiner."

The letter signed "Clincher" in the Bath and Cheltenham Gazette of the 31st May.

"*To the Editor of the Bath and Cheltenham Gazette.*

"SIR, On reading the circumstantial account given in your last of a crime committed at the Octagon Chapel, I do not perceive on what principle the most partial friends and nearest relations of the lady can withhold their belief of it, or pronounce it to be *impossible*. Why do we believe in miracles? Because there could be no collusion between the witnesses who attested them; because these witnesses were persons of good character and integrity; because, far from having any interest in, or expecting any benefit by relating what they saw or heard, on the contrary, in so doing they might be exposed to

hatred, to persecution, and suffering; in one word, because they could neither be deceived themselves, nor be inclined to deceive others. Now all these circumstances combined will, I conceive, apply to the *five* witnesses in question of a felony or an act certainly very marvellous, but by no means *miraculous*.

“ I am, Sir, &c.

“ *Bath, May 26.*”

“ CLINCHER.

Mr. MOORE addressed the Jury on the part of the Defendant. He said that the duty which he had to perform was not, he believed, as difficult as his learned friend's, but it was equally important; and if his learned friend, with greater talents and experience in the conduct of causes, felt this case press on his powers, the Jury would easily conceive how it must affect him (Mr. M.). The issue was, Whether the Plaintiff, such as she had been described and had been proved to be, had committed a felony, and whether she had been falsely and maliciously charged with committing a felony. He did not stand up (and he spoke in the presence of Dr. Gardiner, who knew his opinion,) to praise his compositions; it was his business to prove his pleas. His learned friend had put in the front of his case a charge that Dr. Gardiner had falsely denied having sanctioned the first publication. But there was no proof to sustain this charge; on the contrary, it appeared that he refused to have any thing to do with it. With respect to the Plaintiff's character, he admitted it to stand as high as possible. She had been stated and proved to be a lady of most exalted character, to

have performed all her moral and religious duties with the greatest punctuality and regularity, and to have entitled herself to the panegyrics which her friends had bestowed on her. But he claimed the same admission for Dr. Gardiner. He had the Plaintiff's own evidence of his respectability, in her long attendance at his chapel. Both, then, stood before the Jury persons of unimpeached reputation, up to the transaction in question; and the only question was, whether a felony had been committed. The Plaintiff's statement must be taken to be that in Mr. Edward Bingham's letter. It must have been from her that Mr. Bingham learnt the particulars stated by him. But were they at all probable? Certainly they did not coincide with Mr. Deering's statement. His learned friend had opened the case with great caution and tenderness. He had said generally that the note was taken by mistake. He had declined grappling with the particulars. He had given no account of the structure of the pelisse. And would it be believed that a note adhered to a pelisse, and was carried through a crowd and wind for 50 or 60 yards? It was also a singular circumstance that the Plaintiff said she supposed she had taken the note from the box. How came she to think of the box? What could have suggested to her that she took it from the box, if she had taken it without perception? His learned friend had said he could have no witnesses. Why not? The circumstance happened in a crowd, and every body who saw her put her contribution in the box might have been called. The Defendant had four witnesses, who were all he knew of. They all contradicted the

Plaintiff's statement. They were all servants, and the Plaintiff would have the benefit of the observation to be made on that circumstance. It might be insinuated that they were conspiring against her. But they were servants of excellent character; they all returned to their homes and mentioned what they had seen, and they were all strangers to each other and to the Plaintiff. The first witness was John Smith. He saw a note in the box, and that the Plaintiff took it up unperceived by Mr. Deering, saying, "This is my note." He replied, "No, Ma'am, you took it out of the box, but did not put it in." There was a noise at the time. The Plaintiff went hastily to Milsom Street, turning to the left through a lane of chairs. The witness went round the chairs, and headed her, to get a view of her features. She went into Quiet Street, and then, turning towards the street, raised the note and opened it. The witness's wife calling to him at this time, he went away, and told his master at home of what had happened. Twenty minutes elapsed between the taking and the return of the note. Before the first publication Dr. Gardiner had an interview with the Plaintiff; of course he could not be allowed to state what passed, nor could his lady be a witness for him. He had also seen Smith, and had the means of forming a judgement. The next witness to be called was a servant of Mrs. Strange. He told the same story, and that he heard the Plaintiff speak. How could she speak, if she did not perceive when she took the note? Gage, another witness, added, that she looked up at Mr. Deering as she came towards him, perceived that his attention was diverted, and then took the note.

The crime charged was that of a lady of connexion, of education, of condition, on the Sabbath-day, at the close of divine worship, stealing from the property of the poor. But great and awful as this charge was, it was nothing compared with that imputed to Dr. Gardiner. There could be nothing more criminal than to have imputed this offence to the Plaintiff, if she was innocent. The learned Counsel commended his learned friend for having called his witnesses to character in the first instance, to pre-occupy the minds of the Jury, and not bringing it in answer to the Defendant's statement. The importance of character was almost inestimable. It was that which constituted our moral existence; it was the atmosphere in which we breathed; it alone made man luminous; without it he was shorn of his beams, and divested of his glory. Well did his learned friend know the importance of character. He (the learned Counsel) was there to defend the character of the Defendant. He was to entreat the Jury to pause before they consigned him to the solitude, the silence and the sorrow of the infamy which would attend him if they decided that he had made a false and malicious accusation.

JOHN SMITH was called, and examined by
Mr. WILLIAMS.

I am servant to Colonel Madden. I have lived with him twenty years. I was at the Octagon Chapel on the 14th of May last. I sat in the first seat going into the gallery. Dr. Gardiner and Mr. Deering stood, one on each side of the passage. Mr. Deering was

close to the gallery stairs, by a post. I saw Mr. Deering when I was half-way down the stairs. The people were passing by him. He had a box in his hand; that (pointing to a box which was produced to the witness), or one similar to it. I saw no money put into the box. I saw the box perfectly well, and a note lying in the middle. I don't know that it was a one-pound note. I supposed it was a note. When I came to the bottom of the stairs I put my trifle in. A lady came up at the same time. Her right hand and mine came to the box together; and seeing she was a lady, I drew my hand back to give her precedence. She put in her hand, and then drew it out, saying, "Oh, I believe this is my note." She took the note in her hand and drew it out. "No, madam," says I, "it is not yours: you took it out of the box." I said this louder than she spoke to me. There was silver in the box. The note seemed to have been folded and squeezed. It was like this (here the witness squeezed up a piece of paper and put it in the box). She walked down the passage with a quickish step. The congregation were going out. About thirty or forty had come out; not a quarter of the congregation. I followed her to see if I knew her. Instead of coming out at the front of the door, she squeezed out behind some servants and chairmen, and went behind some chairs. I went round, outside the chairs, to satisfy my curiosity, and confronted her. I saw her face. I took notice of it, that I might know her again. She went aslant down into Quiet Street. I followed four or five yards in Quiet Street. She made a half turn, and fetched her right hand up to the left, and took the note

out of her right hand to examine it. She opened it out, and I saw it was a note. I was about a yard from her. She faced to the middle of the road. My wife called to me from Milsom Street, "Smith, what are you about?" I went back. I saw no one in the street before us. I don't know where she went. I saw nothing more of her. I never saw her before. I have since found out where she lives. It is at No. 18, Gay Street. The way she was going was not the nearest way to her home.

Mr. Serjeant PELL declined cross-examining the witness.

JOHN WEBB was called, and examined by Mr. BAILEY.

I am servant to the Hon. Mrs. Strange. I was at the Octagon Chapel on the 14th of May. After service I was standing beside Mr. Deering. I saw a female, who had the appearance of a lady, put some silver in the box. There were a few scattered pieces of silver in the box, and a note on the top, a little rumpled; but I saw the One on it. I never knew John Smith before*. She took out her hand, and put it in again directly and took out the note, repeating the words, saying, "I believe this is my note." Many persons were near her. I saw John Smith standing close beside her. He said, "No, Ma'am, it is not

* The witness had been desired to pause at the end of the sentence preceding this, to give the Judge time to write down what he said. Mr. Bailey merely addressed the word "well" to him, to remind him to proceed, when he delivered the sentence, "I never knew John Smith before."

your note," or words to that effect. I never saw the lady before or since.

Mr. Serjeant PELL declined cross-examining this witness.

JOHN GAZE was called, and examined by Mr. MOORE.

I am servant to Mrs. Baynes. I was at the Octagon Chapel on the 14th of May. I came out when about half the congregation were out. I saw a lady go to the box. There was a note in the box. I saw her put her hand into the box, then turn away, then come back, and then take the note out. All this was when I was getting down stairs. I never knew Smith or Webb before. I did not observe them that day. I heard nothing said by any person. Many people were going out at the time.

Mr. Serjeant PELL declined cross-examining this witness.

THOMAS GRINDLAY called and examined.

I live near Coventry. I keep a public-house. I was servant to Miss Dugdale. On the 14th of May I was at the Octagon Chapel. I saw a one-pound note being put into the box. I saw it taken out. I don't know by whom; it was a female. She looked like a lady. She was coming out of the body of the church. She stirred the silver. I heard the noise of it. She took her hand from the box. She looked Mr. Deering in the face. He was looking towards the body of the church. She took out a one-pound note, and looked him in the face again. I heard nothing. I

X heard nobody speak. I was about three feet off. A boy ran across and cried out, "D—n her eyes, she has stole a note!" If she had any ears, she must have heard it. She went down the passage hastily, and I saw a servant going after her. I met Miss Dugdale, or should have gone after her myself. I knew neither of the other witnesses. I did not know the lady then. I have not seen her since. She appeared to be rather aged. She looked like a lady.

Mr. Serjeant PELL declined cross-examining this witness.

The Rev. JOHN SIMMONS called and examined.

I am assistant minister at the Octagon Chapel. I remember the charity-sermon preached on the 14th of May. Dr. Gardiner, Mr. Deering and myself were in the vestry counting the money, when a lady came in, and said that in putting her money into the box, she had by some means taken up a one-pound note in her sleeve; but finding it in her way home, she had immediately brought it back. I did not see whether she brought any thing. A one-pound note was returned. My back was towards her. I know John Smith. He came about ten minutes or a quarter of an hour after Miss Bingham was gone. Miss Bingham was not there.

Colonel MADDEN called and examined.

John Smith is my servant. He has lived with me upwards of twenty years. I was at the Octagon Chapel on the 14th of May, and John Smith was there.

I returned home, and Smith was at home before me. I saw him immediately that I came in.

DANIEL HENTY called and examined.

I am butler to Mrs. Baynes. John Gaze was my fellow-servant on the 14th of May. He was at the Octagon Chapel on that day. I remember his return. I saw him soon after his return.

WILLIAM CARNAL called and examined.

I was Mrs. Strange's butler on the 14th of May. I was not at the Octagon Chapel. I saw Webb come back with the family.

No witnesses were called on the Plaintiff's part to repel the evidence of the Defendant's witnesses. But Mr. Serjeant PELL replied. He said, that it must be equally painful to all persons concerned that this cause should proceed, and the Jury be called upon for their verdict. The decision involved every thing that was dear to the Plaintiff; and whatever it might be, he was persuaded that Dr. Gardiner would not in his cooler moments reflect with satisfaction on the conduct he had pursued. The Jury had heard an address of great eloquence, great feeling, and great force from his learned friend, the Counsel for the Defendant. They had also heard his witnesses; and he, the learned Serjeant, with one exception, had nothing to complain of in their testimony. He had forbore to ask them a single question; and it was only Grindlay's evidence that he had found fault with. His asser-

tions as to a boy's exclaiming, "D—n her eyes, she has stolen a note!" were entirely destitute of probability. The rest was not inconsistent with the Plaintiff's case. The question was, whether the Plaintiff had committed a felony—a tremendous one for both parties—but different in the result to each: on the one hand, damages to a certain extent awaited Dr. Gardiner; on the other hand, there awaited the Plaintiff infamy, perhaps exile, perhaps death. Not that death would follow as the legal punishment; but it was not to be expected that she would survive the disgrace. What an alternative! But the balance was against a verdict for Dr. Gardiner. The first witness, Smith, gave a clue to the case. It was a case of mistake. The second witness told the same story. The third heard none of the expressions sworn to by the others. As to the fourth, if his testimony had been true, Mr. Deering and all the others must have heard the exclamation he deposed to, and the lady would have been arrested on the spot. The servants of Bath were not slow to take part in any attack upon their superiors. The question was to be tried as if at a criminal bar: and the question was, whether the note had been taken feloniously and sacrilegiously, or by mistake. He repeated how deeply he was impressed with the importance and responsibility of his duty. On his feeble efforts it depended whether this wretched and unfortunate woman was ever to know a moment's peace again. The Jury had heard her age; and it was easy to suppose her faculties impaired, and that she mistook the note for the paper in her hand. When she was spoken to, if she had stolen the note she would

have known she was detected, and have returned it. She would have retired to a place of secrecy to open it : but she opened it in the face of day, and the congregation all passing at the time. Again, if she had been conscious of guilt, she would have shrunk from public notice ; but she appealed to a Jury of her country ; she owed it to her father, and her family, and her friends, to vindicate the character which she had ever enjoyed. It was now that she was to have the benefit of that character. For who was there that would say this was not a case of doubt ? Was it a giddy or thoughtless person who was accused ? Was it a ruined gambler, a broken-down horse-racer, or some profligate, whose extravagance had reduced him to want a pound note ? No : it was a person who had all the unspotted purity of infancy, whose whole life had been a life of piety. Character was useless in prosperity. What mattered it in the sunshine of fortune how the world thought of any one ? It was in seasons of calamity that character became really valuable. Even if the accusation against her were true, was it to be endured that the defendant should thus drag her into a court of justice ? He had another course to take. As it was, he had left her no alternative. His conduct had been blameable throughout. Notwithstanding his denial of the paragraph entitled “ *Extraordinary Occurrence*,” it was clear that he knew of it ; he corrected it ; and doing so with a knowledge that it was to be published, he must be considered to have sanctioned it. There was great duplicity too in his interview with Mr. Bingham : he had on this occasion practised a deceit, and that at the moment when he

was preparing to discharge his sacred functions, when nothing but honour, truth and piety ought to have actuated him. He ought to have made a legal charge. It was his duty as a clergyman and a magistrate, and nothing could be more disgraceful than his dabbling in a newspaper. The Plaintiff's case was a case of mistake, and he hoped the Jury would be able to account for it. Many cases of property taken by mistake had occurred. One was known to many persons in court. A lady borrowed a gold pencil case to make use of in a shop; and, when she had done with it, instead of returning it put it in her pocket. Upon discovering it she carried it back, and stated the accident to the shopkeeper, who said he had observed her put it in her pocket. Upon hearing this, she reproved him for not having acquainted her with the mistake at the time; the consequence of which might have been her incurring the suspicion of having stolen the pencil case; and she declared that she never would go to the shop again. There was a similar mistake in the present case, and it was not inconsistent with the defendant's evidence. His case was true in part and untrue in part. The facts which he alleged were true, but the motives to which they were ascribed false. He entreated the Jury to make a proper distinction. He reminded them of the prediction of the poet—

‘ Succeeding times will equal folly call,
Believing nothing, or believing all.’

He entreated them to consider her age and her character, while they decided whether she was to descend

to the grave, enjoying the esteem which every body who knew her had ever had for her, or whether they would consign her to ruin and death. He admitted at the same time, that if they believed her guilty, the consequences must not deter them from so pronouncing. The general good of society required that their duty should be firmly discharged. ‘*Fiat justitia, ruat cælum.*’ But her friends knew her to be innocent; he, the learned Serjeant, was not her friend but her advocate, and so far her friend as knowing and respecting her connexions and character; and he should declare it to be his conviction, if this were his last moment, that she never intended to steal the note.

Mr. Justice BURROUGH proceeded to address the Jury. He said that it was particularly painful to him to have to try the present cause; that he had known the plaintiff while she lived in Dorsetshire, and her character was at that time highly esteemed: he also knew Dr. Gardiner, and had always understood him to be a very respectable character. It was therefore very painful to his feelings to be called upon to try such an action; but both he and the Jury had a duty to perform, which they must not allow such considerations to interfere with. The plaintiff had a great advantage in having her case tried in this court, rather than at the criminal bar; namely, that she was allowed counsel to comment on the evidence, and make speeches for her, which in the other court was never permitted. And he cautioned the Jury against being influenced by the speeches which they had heard, or yielding to the appeal which had been made to their feelings. The question was, Whether the plaintiff had committed

a felony. If she had, there was an end of the action. Suppose she had not, then it was a question of damages. For, if no felony had been committed, the defendant's pleas were set aside, and damages must be given. But the case had been too strongly put, as cases frequently were by counsel at the bar. For certainly the circumstances wore an untoward appearance, and a person might have thought there was ground for such an accusation. The question of felony was to be tried as if on an indictment. The first witness as to the circumstances was Mr. Lee. His lordship proceeded to read his evidence. Then there came the defendant's evidence, which the Jury were to look at as if on the other side of the court. His lordship then read the evidence of Smith and all the other witnesses called for the defendant. The Jury were to judge whether what Smith said was true. If it was, it was impossible the plaintiff could have taken the note without knowing it, though it was another question whether she could mistake it. As to what was said, if she did not hear it, it was not evidence to affect her. First, the Jury must be clearly satisfied, as if they were trying the case in the other court, with the witnesses' evidence, before they could say she was guilty. If they believed the evidence, all the character in the world could be of no avail. In that view character was of no importance. In another point of view it was material. Generally speaking, it was improbable she should have committed the offence imputed to her. But facts cut down probabilities. If however there was a rational doubt, any doubt which as sensible men they ought to entertain, they would

consider her character. His lordship then read all the evidence of character. If they thought the pleas not made out, it came to a question of damages. As to that, it was one thing whether she was guilty; and another whether there was an appearance of her being guilty. The Jury would on this point consider, whether, if an indictment against her had been presented to them as grand jurors, they would, on the evidence of the witnesses who had been examined, have found the bill, and sent her into the other court to be tried. If they would, if they thought there was a probable ground for the charge, that would be a reason for giving small damages. They would consider the circumstances of the publication. Here his lordship read the evidence of Mr. Smith, the editor. It appeared, he said, that Dr. Gardiner wished not to have any thing to do with publishing the facts. The letter was read to him, and he pointed out where it was incorrect, and corrected Smith's errors. His lordship then read the "*Extraordinary Occurrence.*" Supposing that it had been published by Dr. Gardiner, it would, he said, have been no great ground of complaint. One fact was perhaps mis-stated, for it did not appear that she ever knew the man was at her heels: but this was a trifle. The comments were all just enough; her rank, her station, her fortune, were all aggravations of the offence imputed to her, as well as the place where it occurred. The fact that the servant Smith related what he had seen to his master must be taken to be proved, for it was so stated in this article, the whole of which the plaintiff made evidence by putting it in. They came next to the letter signed

“Vindicator.” He should not read it, as they had heard it from the officer ; but he had no hesitation in telling them that it was a libel, amounting to a charge of felony. If the defendant had published it, knowing her to be innocent, no damages could be too large. But there was nothing in the case that indicated his design. The Jury, however, would take the papers into their own hands, and consider them. His lordship then read the letter signed “Clincher.” It was sent anonymously, but admitted to be the defendant’s, so that there did not appear any wish to conceal himself. At the same time, the defendant was wrong, and acted very imprudently, in thus stating his strong view of the case. His lordship then read the anonymous letter sent by Dr. Gardiner to Mrs. Bingham. He said it was difficult to tell what he meant by the line drawn in that part where he alluded to her fate. He could not mean a halter, for she had not committed a capital offence. He might mean a prison. The Jury would judge in what spirit it was written. It might be in a spirit of kindness ; and for himself, he could not tell how to ascribe it to any other. And though it might not be a proper step for the defendant, as a magistrate, to have taken, the plaintiff could have no ground to complain of it. His lordship then stated the evidence of Mr. P. Bingham. He said it was for the Jury to decide whether the defendant, in saying that Mr. Bingham would be satisfied by the statement, meant satisfied of the innocence or of the guilt of the plaintiff. It was clear that Mr. Bingham understood of her innocence. The first question for the Jury was, whether the charge against the plaintiff

was proved. If it was, their verdict must be for the defendant; if not, for the plaintiff. In the latter case they would have to consider the damages. And there was a great deal of difference between the defendant's having acted on probability, or maliciously. If he acted on a belief that the charge was probably true, small damages would be sufficient; if maliciously, large damages ought to be given, that is, such damages as the Jury might think the nature of the case deserved. But it did not appear to his lordship that there was any malice, though the defendant had taken the matter up rather warmly and imprudently.

The Jury, after some consultation, desired John Smith to be recalled, and he underwent the following examination by Mr. Stuckey.

Question. You have stated that in Quiet Street Mrs. Bingham took out the note; how far was you from her?

Answer. I was about a yard from her.

Question. Did she see you?

Answer. I don't know, I do not think she did.

Question. You say your wife called you; Mrs. Bingham must have heard that?

Answer. I do not know, I do not think she did.

The Jury then pronounced their verdict for the Defendant.

THE END.

